Office Supreme Court, U.S.
FILED
MAR 19 1963
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In the

Supreme Court of the United States

October Term 1962

No. 715

FORD T. JOHNSON, JR.,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia

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PRELIMINARY STATEMENT

By letter of the Honorable John F. Davis, Clerk of the Supreme Court of the United States, dated February 18, 1963, the Attorney for the Commonwealth of the City of Richmond was requested to file a response to the petition for writ of certiorari in the instant case.* In accordance with the request contained in the above mentioned communication, written by the Clerk at the direction of this Court, the within brief of the respondent in opposition to the petition for writ of certiorari is filed.

* Post, Appendix A.

On April 27, 1962, petitioner Ford was convicted in the Traffic Court of the City of Richmond of violating Section 18.1-292 of the Virginia Code (1950) as amended and was sentenced to pay a fine of $10.00 and costs. Said punishment was levied in accordance with Section 18.1-293 of the Virginia Code (1950) as amended. Upon appeal to the Hustings Court of the City of Richmond, he was again convicted and a like sentence was imposed on June 18, 1962. A writ of error was denied by the Supreme Court of Appeals of Virginia, and; thus, the judgment was affirmed on October 5, 1962. The cause is currently before this Court upon petition for writ of certiorari to the Supreme Court of Appeals of Virginia, filed in the Supreme Court of the United States by petitioner on January 2, 1963.

STATEMENT OF FACTS

On April 27, 1962, petitioner Ford was given a direct order by the Honorable Herman A. Cooper, Judge Traffic Court of the City of Richmond, while said Judge was sitting in Court and Court was in session to remove himself from in front of the bench and take a seat. Petitioner Ford refused to obey the said order given by the Honorable Herman A Cooper. After refusing to obey the order of the Court, petitioner was cited and summarily convicted of contempt.

The Traffic Court of the City of Richmond is a Municipal Court of the City of Richmond and is being operated pursuant to the charter of the City of Richmond and the Commonwealth of Virginia; that the Honorable Herman A. Cooper was duly appointed by the Judges of the court of record in the City of Richmond and was on April 27, 1962, and is now acting as the Judge of said Court. The seating space in the court room reserved for spectators and those awaiting the call of their cases before the court is assigned

on the basis of racial designation, the seats on one side of the aisle being for use of Negro citizens and the seats on the other side being for the use of white citizens. The same number of seats are available for citizens of each race. There is no separation of the races in the area before the bench or the bar of the Court. Only persons having business before the Court are permitted in that area when the Court is in session. The separation of the races in that portion of the court room reserved for spectators has been a long established practice, directed and enforced by every judge occupying the bench of said Court. The practice and custom has been and is for the purpose of preventing frictions between the races and to preserve order and decorum in the court room and to assure the orderly administration of justice to all, regardless of race or color. The segregation requirements have been enforced in the case of all citizens, white and Negro alike.

THE STATUTE

Under attack in the instant case are Section 18.1-292 and 18.1-293 of the Code of Virginia (1950) as amended, which provide:

> Section 18.1-292. Cases in which courts and judges may punish summarily for contempt.—
>
> (1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;
>
> (5) Disobedience or resistance of an officer of the court, juror, witness or other person to any lawful process, judgment, decree or order of the court.
>
> Section 18.1-293. Power of judge of court not of record to punish for contempt.—A judge of a court

not of record shall have the same power and jurisdiction as a court of record to punish summarily for contempt, but in no case shall the fine exceed fifty dollars, or the imprisonment exceed ten days, for the same contempt.

QUESTIONS PRESENTED

1. Did the petitioner violate the Virginia statute on contempt of Court: and if so, to what degree and in what manner?

II. Did the Court abuse the process thereof in charging and convicting the petitioner of contempt summarily under the factual situation?

III. May a judge of a court of the Commonwealth of Virginia or a political subdivision thereof arbitrarily classify citizens solely according to race or color and require them to sit in areas of the court according to said classification?

IV. Whether a citizen of the Commonwealth of Virginia may be legally charged with contempt of court based upon an order of the court which is founded on an unconstitutional classification of citizens of the United States of America?

V. Whether or not the Traffic Court of the City of Richmond, Virginia, had inherent power to charge and convict summarily by contempt without affording the petitioner an opportunity to secure counsel or be heard by a jury?

VI. Was the conviction of the petitioner a violation of "due process of law" guaranteed the petitioner under the Constitution of the United States and of the Commonwealth of Virginia?

VII. Was the conviction of the petitioner in derogation of his rights guaranteed by the Fourteenth Amendment of the Constitution of the United States of America?

ARGUMENT

I. The petitioner did violate Section 18.1-292 of the Virginia Code (1950) as amended and was in contempt of court.

Section 18.1-292 of the Virginia Code (1950) as amended is clear and unambiguous and has been the uncontradicted law of the Commonwealth of Virginia since 1919. As is manifest from its terms, the statute does no more than states clearly and precisely what constitutes contempt of court. It states those acts or facts that are deemed contempt of court. The statute is so clear, concise, unambiguous and not subject to misunderstanding by anyone capable of reading English, that it is absolutely impossible not to be able to understand and know that the petitioner was defiant, and contemptuous in his actions and attitude toward the Court and thus was guilty of contempt of court. No other conclusion could be reached than that the petitioner did violate Section 18.1-292 of the Virginia Code (1950) as amended. Virginia Constitution, Section 63, permits the Legislature to regulate the rights of courts to punish for contempt. Further in Yoder vs. Commonwealth 107 Va. 823, it was established that the Virginia General Assembly "may regulate the exercise by courts of the right to punish for contempt" was not intended to clothe the Legislature with absolute power over the subject.

II. The Court did not violate Section 18.1-292 or 18.1-293 of the Virginia Code (1950) as amended.

Section 18.1-292 of the Virginia Code (1950) as amended has been fully discussed and covered in paragraph (I.) immediately above. It is perfectly clear from a reading of the statute that the Court had the right to find petitioner

guilty of contempt of court. Section 18.1-293 of the Virginia Code (1950) as amended is nothing more than a penalty statute and provides the maximum punishment for contempt of court in a court not of record, as is the Traffic Court of the City of Richmond. The punishment given to petitioner was well within the limits of the punishment allowed under said Section 18.1-293.

III. The Judge of the Traffic Court of the City of Richmond does have the inherent power to conduct the proceedings and control the behavior in his Court as he deems proper.

It is a well established rule of law that contempt of court has been recognized for centuries. It is recognized in the Commonwealth of Virginia that the Legislature by the Constitution of said Commonwealth, Section 63, has the right to regulate contempt of court but said Legislature does not have absolute power over the subject. Yoder vs. Commonwealth, supra. A judge is like a captain of a ship and his rule is absolute unless in violation of the laws governing said judge. To be otherwise would lead to chaos in that the judge would be powerless to preserve order and decorum and dispense justice. The power of the judge would include the right to arrange seating as deemed most expeditious just as a court may prohibit smoking in the court or bringing a briefcase into the court. The case of George Wells, et al vs. Honorable Herbert B. Gilliam, Chief Judge Petersburg Municipal Court, decided June 1, 1961, in the United States District Court, Eastern District of Virginia, in a case involving segregated seating according to race, the Court stated "that a judge has control of his court room and the conduct of those attending his court is axiomatic. In the administration of justice the judge is charged with

the preservation of order in his court and to see to it that justice is not obstructed by any person or persons whatever. Such is inherent in and incident to the exercise of the jurisdiction conferred upon him and is consonant with the power to punish for contempt committed in the presence of the court." The Court quoted 14 Am. Jur., Courts, Section 42 and 43. The Court also stated, "It is well established that all courts have the inherent power to prescribe such rules of practice and rules to regulate their proceedings and facilitate the administration of justice as they deem necessary. The power to maintain order, to protect itself or its officers from being disturbed in the exercise of their functions, and the power to punish individuals who fail to comply with the rules adopted by the court to that end, are probably the most important of all inherent powers of a court, since such powers are essential to the very existence of a court as a judicial tribunal." The Court cited, 14 Am. Jur., Courts, Section 150, 151, 153 and 171. In addition to this inherent power, it is very clear under the laws of Virginia that judges of the courts of record have control of the building in which their courts are maintained. Dawley vs. City of Norfolk 159 Fed. Supp. 642.

IV. There is no order in this case based on an unconstitutional classification of the citizens of the United States of America.

The order given by the Court was a proper order and was an order that was essential for the proper conduct of the business and of the decorum of the Court. Clearly the Court cannot proceed with dispensing justice, when a person charged with a violation is not being tried stands in front of the bench and defies and disobeys a direct order of the Court when said Court is in session.

V. The Traffic Court of the City of Richmond, Virginia has inherent power to summarily convict and punish petitioner for contempt of court without affording him an opportunity to secure counsel or be heard by a jury.

Section 18.1-292 and 18.1-293 of the Code of Virginia (1950) as amended and fully described, supra, clearly gives the court the right to convict and punish one guilty of contempt. In Carter vs. Commonwealth 96 Va. 790, the Court stated "There is inherent power of self-defense and self-preservation in the courts of this state created by the Constitution. This power may be regulated by the Legislature, but cannot be destroyed or so far diminished as to be rendered ineffectual. It is a power necessarily resident in and to be exercised by the court itself, and the Legislature cannot deprive such courts of the power to summarily punish for contempt by providing for a jury trial in such case." The identical language of the Carter vs. Commonwealth case was quoted in Burdett vs. Commonwealth 103 Va. 838.

VI. The conviction of the petitioner was not a violation of "due process of law" guaranteed the petitioner under the Constitution of the United States and Commonwealth of Virginia.

By virtue of the Constitution of the Commonwealth of Virginia, Section 63, the General Assembly has the right to regulate contempt of court. The General Assembly of said Commonwealth exercised its right by the law set forth in Section 18.1-292 and 18.1-293 of the Code of Virginia (1950) as amended. The finding of the petitioner guilty of contempt of court and his punishment was in compliance with the Code sections enumerated and was not a violation of due process of law.

VII. The conviction of the petitioner was not in derogation of his rights guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

The Fourteenth Amendment to the Constitution does not grant any rights to citizens of the United States. It provides only that no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; or shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

There is no law in the Commonwealth of Virginia or ordinance of the City of Richmond that requires the separation of the races in the spectators section of the Traffic Court of the City of Richmond. The Federal courts have consistently held that the State courts are separate, distinct, judicial bodies. Abstinence, in state affairs, when not in conflict with the United States Constitution, has long been the federal policy. Harrison vs. NAACP, 360 U.S., 167, "This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system." Matthews vs. Rodgers, 284 U.S. 521, 525, "a scrupulous regard for the rightful independence of state governments **** should at all times actuate the federal courts."

If citizens of the United States had the right to determine where they may sit in the Traffic Court of the City of Richmond they have the right to applaud, the right to take pictures, and many other similar rights; carried to the extreme, proper court room decorum and order would be nonexistent. To restrict a court in the seating of people in

the court would further prevent a court from clearing the court room of all spectators in order to maintain decorum and order.

There is no allegation of or offer of proof that the order complained of is not being enforced equally among all citizens regardless of race or color.

CONCLUSION

For the foregoing reasons, counsel for the Commonwealth submits that the actions of the Honorable Herman A. Cooper, Judge of the Traffic Court of the City of Richmond was proper and that there was no violation of the law of the Commonwealth of Virginia, the Constitution of the United States of America or the Constitution of the Commonwealth of Virginia and that the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

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City Hall—Room 103
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OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

February 18, 1963

THE HONORABLE T. GRAY HADDON
Commonwealth's Attorney
City Hall
Richmond 19, Virginia

RE: JOHNSON v. VIRGINIA
No. 715, October Term, 1962

Dear Sir:

A petition for writ of certiorari was filed in this Court on January 2, 1963 in the above-entitled case, and my records indicate that you were served with a copy of the petition on or about January 2, 1963.

I have been directed by the Court to request that you file a response to such petition and 40 copies of your response, with service, should reach this office by March 20, 1963.

Very truly yours,

JOHN F. DAVIS, *Clerk*

By /s/ E. P. CULLINAN
E. P. CULLINAN
Chief Deputy

EPC: jmh
cc: ROLAND D. EALEY, *Esquire*
420 North First Street
Richmond 19, Virginia